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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/002,584	01/05/1998	THEODORE D. WUGOFSKI	450222US1	7973

32719 7590 10/22/2002

GATEWAY, INC.
14303 GATEWAY PLACE
ATTENTION: MARK WALKER (MAIL DROP SD-21)
POWAY, CA 92064

EXAMINER

BROWN, RUEBEN M

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 10/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.
09/002,584

Applicant(s)
Wugofski

Examiner
Reuben Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Sep 10, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See encloses Advisory Action.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____
- Claim(s) objected to: _____
- Claim(s) rejected: 1-6, 9-13, 15-19, 21-23, 28-32, 35, 36, 39, 40, and 43-45
- Claim(s) withdrawn from consideration: _____
8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

ANDREW FAILE

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER No. 19

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ADVISORY ACTION

Response to Arguments

1. Applicant's arguments filed 9/10/2002 have been fully considered but they are not persuasive. On page 9, applicant recognizes that limitations from the specification are not imported in to the claims, but nevertheless argues that as per the specification, the term 'in-band' data does not includes audio/video content. However, examiner points out that the claims do not restrict the 'in-band' data broadcast to EPG data, since the claims recite that the 'in-band' data comprises EPG data.

Applicant argues that the references do not meet the features recited in the claims, examiner respectfully disagrees. It is clear that Young discloses a user initiated scheduling process for determining a scheduled time and channel for an in-band data broadcast, see col. 4, lines 10-26. Young also discloses updating EPG data several times a day, col. 18, lines 41-50. However, Young does not explicitly state that updating of the EPG may be user-initiated. Nevertheless, Metz is relied upon to teach the claimed feature of user initiated scheduling of EPG data.

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According to Metz, it is desirable for the user initiate the scheduling process for downloading application programs, such as EPG data, see col. 20, lines 31-55; col. 28, lines 25-31 & col. 30, lines 24-26. One of ordinary skill in the art at the time the invention was made, would have been motivated to combine the Young reference with Metz, at least for the desirable advantage of enabling the user to scheduling the download of the EPG according the available time if the user.

Applicant also argues that the there is no motivation to combine the references. Ohga is relied upon to teach automatically turning-on a TV at a certain time, which is clearly a desirable improvement on Young, since there may be time when the user has scheduled to record a program, but by accident turned-off the receiver. Marsh is relied upon to teach determining if a conflict exists for recording different content and resolving such conflicts. Again this feature is a known desirable improvement to Young. As for Metz, the instant reference is directed to the improvement of enabling a user to interactively initiate the downloading of interactive applications, col. 5, lines 50-64& col. 9, lines 20-37.

Examiner furthermore points out that even though claim 1 recites a 'user initiated scheduling process for determining a scheduled time and channel...', this limitation does not require that it is the user that actually chooses the time and channel of the broadcast. The claim merely requires that the user initiates the scheduling process, which is broad enough to read on

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the user activating or selecting a particular routine, and therefore reads on the combination of Young and Metz.

Applicant requests a reference to back up examiner's assertion that at the time the invention was made, it was well known to provide a program ordered by a user to the user over a particular broadcast channel, at a particular time. Examiner refers applicant to Young, (col. 22, lines 50-65) and Ohga, (Abstract; col. 4, lines 11-15) for support. In view of the above discussion, examiner maintains the rejection of record.

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Any response to this action should be mailed to:

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Or:

(703) 872-9314 (for informal or draft communications, please label

"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (703) 305-2399. The examiner can normally be reached on Monday thru Friday from 830am to 430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380. The fax phone number for this Group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.